

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

CLIFFORD DILBERT,

Plaintiff,

No. C 05-00087 JSW

v.

JOHN E. POTTER, Postmaster General,

Defendant.

**ORDER GRANTING MOTION TO
WITHDRAW AS COUNSEL**

The motion to withdraw as counsel for plaintiff Clifford Dilbert filed by Beverly Saxon Leonard is fully briefed and ripe for decision. The Court finds the motion suitable for disposition without oral argument. Civ. L.R. 7-1(b). Accordingly, the hearing set for January 6, 2006, is HEREBY VACATED and Plaintiff's request to appear by telephone is DENIED.

Plaintiff filed this suit for violations of the Rehabilitation Act of 1973 and Title VII of the Civil Rights Act of 1964. (Complaint, ¶ 3.) Plaintiff alleges that he is disabled and was discriminated against by Defendant, the Postmaster General, on the basis of his disability and by Defendant's failure to grant his requests for a reasonable accommodation in the workplace. (*Id.*, ¶¶ 3, 6, 7, 9.)

Counsel Leonard requests withdrawal from her representation of Plaintiff due to her claim that Plaintiff's conduct has made it impossible to represent him in good faith. At the time of filing, Plaintiff was being held on sexual molestation charges and was out of contact with civil counsel. On the day the jury in the criminal trial was to return its verdict, Plaintiff illegally

1 fled to Canada and was out of touch with his attorney. Plaintiff was convicted in absentia and
2 was thereafter captured in Canada where he fought extradition for approximately six months.
3 Although Plaintiff was recently returned to Napa County, his civil counsel contends that this
4 wrongful termination action has little value and a jury would likely not believe the claims for
5 discrimination given Plaintiff's circumstances. Counsel also contends that because Plaintiff is
6 likely to be incarcerated for years, he will be unable to assist her in the prosecution of his case.
7 In addition, although Plaintiff has responded to the motion to withdraw and appears to be
8 willing to participate in the preparation of his case, his current circumstances make coordination
9 with counsel very difficult. In addition, counsel has declared that Plaintiff has failed to pay
10 outstanding legal fees and that there is no current arrangement for the payment of fees.

11 A motion to withdraw by an attorney in a federal case is governed by the California
12 Code of Professional Conduct, which provides for permissive withdrawal where the client
13 renders it unreasonably difficult to carry out the employment effectively. *See, e.g., Denney v.*
14 *City of Berkeley*, 2004 WL 2648293, *2 (N.D. Cal. 2004); Cal. Rules of Prof'l Conduct 3-700.
15 The Court may deny the motion where withdrawal would cause an injustice in the handling of
16 the case or cause undue delay in the proceedings. *See, e.g., People v. McCracken*, 39 Cal.2d
17 336, 350 (1952); *Manfredi & Levine v. Superior Court*, 66 Cal. App. 4th 1128, 1133-36 (1998).
18 Here, the record indicates that Plaintiff's conduct has made it unreasonably difficult for counsel
19 to carry out the employment effectively, both because of his incarcerated status and distance
20 from counsel as well as his nonpayment of fees. There is no indication that the withdrawal
21 would cause an undue delay or result in an injustice.

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1 Having found good cause, the Court HEREBY GRANTS Leonard's motion to be
2 relieved as counsel for plaintiff Dilbert in the above captioned case. Mr. Dilbert shall proceed
3 hereinafter *pro se*, this matter will no longer be e-filing, and Plaintiff may address the Court in
4 written form without the benefit of appearance. Further, defendant must serve Plaintiff
5 personally with all papers and motions in this matter, including this order.

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7 **IT IS SO ORDERED.**

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9 Dated: January 4, 2006

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11 JEFFREY S. WHITE
12 UNITED STATES DISTRICT JUDGE
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